

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

ROGACIANO HERRERA,	)	
ID # 32818-177,	)	
Movant,	)	No. 3:08-CV-0043-N
vs.	)	No. 3:05-CR-0024-N (01)
	)	ECF
UNITED STATES OF AMERICA,	)	
Respondent.	)	

**RECOMMENDATION REGARDING CERTIFICATE OF APPEALABILITY**

A Notice of Appeal has been filed in the above captioned action in which:

(X) the District Court has entered a final order in a proceeding brought pursuant to 28 U.S.C. § 2255.

Pursuant to Federal Rule of Appellate Procedure 22(b) and 28 U.S.C. § 2253(c), the undersigned Magistrate Judge recommends as follows:

**IFP STATUS:**

(X) the party appealing should be GRANTED *in forma pauperis* status on appeal.

**COA:**

- ( ) a Certificate of Appealability should be GRANTED. (See issues set forth below).  
(X) a Certificate of Appealability should be DENIED. (See reasons stated below).

**REASONS FOR DENIAL:** For the reasons stated in the Findings, Conclusions and Recommendation of the United States Magistrate Judge, filed on May 7, 2008, which the District Court accepted on August 5, 2008, the motion to vacate is barred by the statute of limitations. See 28 U.S.C. § 2255(f). Movant has failed to show that reasonable jurists would find it debatable whether the Court was correct in dismissing his case as time barred. See *Miller-El v. Cockrell*, 537 U.S. 322, 338 (2003); *Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000); 28 U.S.C. § 2253(c)(2).

DATED this 2nd of October, 2008.

  
IRMA CARRILLO RAMIREZ  
UNITED STATES MAGISTRATE JUDGE